tion is less painful and more humane than hanging. * * * The statute under consideration did not change the penalty—death—for murder, but only the mode of producing this, together with certain non-essential details in respect of surroundings. The punishment was not increased, and some of the odious features incident to the old method were abated." The court follows the doctrine laid down in *Calder* v. *Bull,* 3 Dall. 386, by Mr. Justice CHASE, who included in his enumeration of *ex post facto* laws, "every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed," and who further said "But I do not consider any law *ex post facto,* within the prohibition, that mollifies the rigor of the criminal law; but only those that create or aggravate the crime; or increase the punishment or change the rules of evidence, for the purpose of conviction." The right of the legislature to change the punishment for crimes already committed, provided the situation of the accused is not altered to his disadvantage, and the province of the courts in applying this test have been consistently recognized by this court and most of the state courts. *In re Medley, Petitioner,* 134 U. S. 160; *Rooney* v. *North Dakota,* 196. U. S. 319; *Commonwealth* v. *Wyman,* 12 Cush. (Mass.) 237; *Commonwealth* v. *Gardner,* 11 Gray (Mass.) 438; *McGuire* v. *State,* 76 Miss. 504. In the three cases last cited, a change in punishment from death to life imprisonment was upheld as being in mitigation of the former penalty. The extent to which some courts have gone in sustaining such legislation on this ground is shown by the case of *Strong* v. *State,* 1 Blackf. (Ind.) 193, in which a statute was sustained that changed the punishment for offenses formerly punishable by whipping not exceeding 100 stripes to a term in the penitentiary not exceeding seven years. In New York an act changing the punishment from death to life imprisonment at hard labor, with a possibility of capital punishment thereafter in the discretion of the governor, has been held *ex post facto,* if applied to acts committed before its passage. *Shepard* v. *People,* 25 N. Y. 406; *Hartung* v. *People,* 22 N. Y. 95. In these cases, the doctrine was laid down, although it was perhaps unnecessary to the decision, that a law is *ex post facto* which punishes an act in a different manner from that in which it was punishable when committed, "irrespective of the question whether the new punishment is or is not more merciful or lenient," on the ground that that question should not be left to the discretion of legislators or judges. This rule has, however, apparently found little favor with the courts of other states, and doubt was thrown upon its soundness in a *dictum* in *People* v. *Hayes,* 140 N. Y. 484, when applied to cases where the change is "of that nature which no sane man could by any possibility regard in any other light than that of a mitigation of punishment."

CONSTITUTIONAL LAW.—DISCRIMINATION AGAINST ALIENS.—A New York statute provided that all persons employed upon any work for the state, or any county, town, or city therein, either directly or through contractors, should be American born citizens, or persons naturalized in the United States, preferably residents of that state; and provided a penalty for any violation thereof by any contractor or sub-contractor on any public work.

In a prosecution for its violation this statute was upheld (COLLINS, J., dissenting), as not being in violation of the 14th Amendment to the United States Constitution. *People* v. *Crane,* (N. Y. 1915) 108 N. E. 427.

The prevailing opinion by Mr. Justice CARDOZO proceeds upon the ground that the public property of the state belongs to the people thereof, and in making disposition thereof it may prefer its own citizens; that it is a matter of the welfare of the people, and aliens may be discriminated against as in other cases of the disposition of public property for the benefit of the people directly, taking the view that the payment of the wages is a benefit. The court relies upon *McCready* v. *Va.,* 94 U. S. 138; *Geer* v. *Connecticut,* 161 U. S. 519; *Petione* v. *Pa., 232* U. S. 138; *Mining Co.* v. *Lee,* 21 Colo. 260; *Blyth* v. *Hinksley,* 180 U. S. 333; these cases holding that the state may reserve to its citizens only, the right to plant oysters in public water, to enjoy its game, the benefit of its charitable institutions, the distribution of public lands, and the right to hold and inherit land The case of *Atkin* v. *Kansas,* 191 U. S. 207, is relied upon to rebut the argument that even though it may prefer its citizens to aliens in its own contracts it cannot thus limit the contracting power of the contractor hired by it. This case certainly is sufficient answer to any such contention. Mr. Chief Justice BARTLETT, in a concurring opinion, takes the position that the state, as a contractor, stands upon the same footing as any other contractor, and may prescribe the terms upon which it will contract with others, and that it is no more of a denial of "due process" or "equal protection of the law" for it to discriminate against aliens than a like contract between individuals would be. His chief reliance is upon *Ellis* v. *U. S.* 206 U. S. 246, and New York decisions in accord therewith. Mr Justice SEABURY, also concurring, places the decision upon the police power of the state, saying that this statute has such a reasonable relation to the public welfare as to authorize its enactment by the legislature, and that the 14th Amendment does not in any way interfere with the police power. *Bartemeyer* v. *Iowa,* 18 Wall. 129. All of the above positions are doubtless correct and are sustained by the authority cited. So that, regardless of one's feelings as to the propriety of the legislation, which cannot enter into a determination of the constitutional question (*McLean* v. *Ark.,* 211 U. S. 539), it is certainly not opposed to any constitutional restriction.

CONSTITUTIONAL LAW.—EXPORT DUTIES.—Actions were brought to recover back the amount of stamp taxes upon charter-parties, which were exclusively for the carriage of cargo from ports of the United States to foreign ports, and upon policies insuring certain exports against marine risks, under the War Revenue Act of 1898, upon the ground that the imposition of such taxes was in violation of the Constitution of the United States, which provides: "No tax or duty shall be laid on articles exported from any state." It was *held* in both cases that the taxes were invalid and recoverable. *United States* v. *Hvoslef & Walsh, survivors of William Bennett,* 35 Sup. Ct. 459, *Thames & Mersey Marine Insurance Co.* v. *United States,* 35 Sup. Ct. 496.